

LOS ANGELES POLICE COMMISSION

COMPLAINT INVESTIGATIONS AUDIT, FISCAL YEAR 2010/2011



Conducted by the

OFFICE OF THE INSPECTOR GENERAL

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April 13, 2011

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PURPOSE

The Office of the Inspector General (OIG), pursuant to its Audit and Review Plan, has completed its annual Complaint Investigations Audit (Audit). The purpose of this Audit was to evaluate the quality of complaint investigations and the reasonableness of related adjudications.

BACKGROUND

Personnel complaints alleged against sworn and civilian employees of the Los Angeles Police Department (Department) are investigated by the accused employee's Chain of Command (COC) or Internal Affairs Group (IAG). The IAG generally investigates complaints with the allegation types of Unauthorized Force, False Imprisonment, Unlawful Search, False Statements, Misleading Statements, Theft, Narcotics/Drugs, Sexual Misconduct, Invidious Discrimination, Domestic Violence, and Retaliation;¹ and the COC generally investigates complaints of all other allegation types.

Historically, Internal Audits and Inspections Division (IAID) has conducted an annual audit of complaints investigated by both IAG and the COC, while the OIG has conducted an annual audit of complaints investigated by IAG. In this current OIG Audit for Fiscal Year 2010/2011, the OIG focused on IAG complaint investigations with one or more allegations of Unlawful Search or False Imprisonment adjudicated as Exonerated, because such an adjudication implies that the searches and/or detentions/arrests did indeed occur but were justified, lawful, and proper. As searches and detentions/arrests, if inappropriate, could violate constitutional rights, the OIG was interested in assessing the Department's conclusion that the searches and/or detentions/arrests were lawful.

METHODOLOGY

The OIG reviewed all 29 complaint investigations with one or more allegations of Unlawful Search or False Imprisonment adjudicated as Exonerated which closed from January 1, 2009, to October 30, 2009. For these 29 complaint investigations, the OIG listened to all 120 audio-recorded interviews and compared the related written summarized statements.

The OIG conducted this Audit in accordance with generally accepted government auditing standards. These standards require that the Audit is adequately planned, performed, and supervised and that sufficient, appropriate evidence is obtained by applying review procedures which assess whether a reasonable basis for the findings and conclusion were contained herein.

¹ The Consent Decree (§s 93 & 94) required IAG to investigate complaints with these allegations types. After the termination of the Consent Decree in July 2009, these requirements were generally codified in the Department Local Area Network, *Organizational Information, Organization and Functions of the Office of Chief of Police, Professional Standards Bureau, Internal Affairs Group – Functions*; http://pdinfoweb.lapd.lacity.org/files/Org_Info/2010/4-20-10.htm (Feb. 2011)

OBJECTIVES

The following Audit objectives, for which 20 tests were developed, were used to evaluate the quality of each complaint investigation and the related adjudication:

1. Determine if misconduct was identified and accurately framed.²
2. Determine if the required and necessary investigative steps were completed.
3. Determine if audio-recorded interviews were accurately and completely summarized in writing.
4. Determine if investigative interviews were conducted within Department guidelines.
5. Determine if the adjudication of the allegations was reasonable based on the investigative evidence and results.

Two questionnaire matrices were utilized to conduct the Audit. One matrix was designed to evaluate the documentation in each of the aforementioned 29 investigative files, and the other matrix was designed to evaluate the aforementioned 120 audio-recorded interviews and the related summarized statements.

SUMMARY OF RESULTS

Seventeen (17) of the 20 audit tests had a compliance rate of 100% and 3 tests had a compliance rate of 97% (28/29), summarized as follows:

No.	TEST DESCRIPTION	COMPLIANCE %	NO. OF COMPLAINTS
1	Determine if misconduct was identified and accurately framed.	100	29/29
2	Determine if the required & necessary investigative steps were completed:		
a	Determine if all pages of the investigation were present.	100	29/29
b	Determine if the investigator's chronological log was included in the file.	100	29/29
c	Determine if all interviews conducted by the investigator were recorded.	100	29/29
d	Determine if all identified public witnesses were interviewed.	100	29/29
e	Determine if all Department employees who witnessed or were involved in the incident were interviewed, if necessary.	97	28/29
f	Determine if the investigator addressed all significant inconsistencies between interview statements.	100	29/29
g	Determine if all significant physical and documentary evidence pertinent to the investigation was collected and preserved.	100	29/29
h	Determine that there are no significant concerns or questions that potentially impact the adequacy and thoroughness of the investigation that have not already been addressed in previous questions.	97	28/29

² This includes misconduct alleged by the complainants and public witnesses and potential misconduct raised during the investigation that was, or should have been, identified by the Department.

No.	TEST DESCRIPTION	COMPLIANCE %	NO. OF INTERVIEWS
3	Determine if audio-recorded investigative interviews were accurately and completely summarized in writing:		
a	Determine if the summarized statement was accurate (correctly and fairly reflects spoken statement).	100	120/120
b	Determine if the summarized statement was complete (includes all relevant, pertinent spoken statement).	100	120/120
4	Determine if investigative interviews were conducted within Department guidelines:		
a	If the interviewee was a public complainant or witness, determine if the interview appears to have been at a time and place convenient to the interviewee.	100	40/40
b	If the interviewee was a public complainant or witness, determine if the tone of the interviewer was neutral and professional (not hostile or condescending).	100	40/40
c	Determine if the interviewee was interviewed separately (not part of a group).	100	120/120
d	Determine if the questions were open-ended (not leading/suggestive of correct answer).	100	120/120
e	Determine if the investigator asked all necessary relevant questions.	100	120/120
f	Based on the interviewee's answers to previous questions, determine if all necessary logical follow-up questions were asked.	100	120/120
g	Determine that the recorded statement does not reflect any additional allegations made by the complainant/witness that were not already identified.	100	120/120
h	Determine that there are no additional concerns that were not already covered by any of the other questions.	100	120/120
No.	TEST DESCRIPTION	COMPLIANCE %	NO. OF COMPLAINTS
5	Determine if the adjudication of the allegations was reasonable based on the investigative evidence and results.	97	28/29

DETAILED FINDINGS

There were three findings for two investigations, Nos. 09-001124 and 09-002363, pertaining to Test Nos. 2e, 2h, and 5 (the three tests that had a compliance rate of 97%). These three findings are described in detail on the following pages.

09-001124

Background

This complaint resulted from an incident in which officers allegedly observed a moving vehicle with a cracked windshield. The officers conducted a traffic stop and detained the male driver, determined to be on parole. The officers searched the vehicle and located a souvenir Los Angeles Dodgers baseball bat, allegedly underneath the driver's seat. The male driver was arrested for possession of a prohibited weapon, the souvenir bat. The complainant, who is the arrestee's sister, alleged that each of the two officers arrested her brother without cause. These two allegations were both adjudicated as Exonerated.

Non-Compliant Tests

Test No. 2e - Determine if all Department employees who witnessed or were involved in the incident were interviewed, if necessary.

There was no evidence that the investigative officer interviewed the two accused officers. The arrestee indicated in his interview with the investigative officer that he did have a cracked windshield but believed that the officers could not have observed it from "100 yards or a mile away." Since the officers allegedly conducted the traffic stop because of the cracked windshield (Vehicle Code (VC) § 26710 - Defective Windshields and Rear Windows),³ the OIG would have preferred that the investigative officer had interviewed the two accused officers. The officers should have been asked how far away they were from the vehicle when they first observed the cracked windshield and whether the driver's vision was impaired.

09-002363

Background

This complaint resulted from an incident in which two officers detained a middle-aged African American male during a traffic stop, and allegedly handcuffed and searched him. The complainant alleged that the two officers detained him based on his race. In his audio-recorded interview the complainant said he stopped at the green light because he wanted to make sure it was safe before making a right turn, as he was near a busy liquor store and he was concerned there could be pedestrians in the cross walk. The complainant said that after the officers stopped him, he was immediately ordered to get out of the car with his hands behind his head and walk to the curb. According to the complainant, his hands were interlocked when the officer reached into the complainant's pocket to pull out his wallet for identification. The complainant alleged that the officer then grabbed the complainant's hands and pulled him off balance, and immediately handcuffed and searched the complainant and his vehicle without cause.

³ VC § 26710 - "It is unlawful to operate any motor vehicle upon a highway when the windshield or rear window is in such a defective condition as to impair the driver's vision either to the front or rear."

Although neither officer recalled any details of this detention in their interviews, their Daily Field Activities Report for this incident indicated that the complainant was detained for stopping his vehicle at a green light (VC § 21451(a) – Circular Green or Green Arrow)⁴ and later released without being issued a citation. Furthermore, the officers stated in their interviews that their common practice was to handcuff and search a traffic stop detainee if they had indication that there might be a want or warrant for the detainee.

The investigating officer of the complaint requested and received the printout of the mobile data communications (MDC) usage for the officers' unit, and the Incident Recall showing the printed record of radio communication. The MDC printout shows that the officers performed a stolen vehicle check on the complainant's license plate number at 22:32:50 hours. The license plate check confirmed that the vehicle was not stolen and that the plate had no "hits,"⁵ and also provided the name of the registered owner, who was the complainant.

During the next minute at 22:33, the officers advised by radio they were "on traffic stop," gave the stop location, and provided the complainant's license plate.⁶ This information was confirmed on the printed Incident Recall record of radio transmission. Presumably, the officers made contact with the driver (and complainant) shortly thereafter.

At this point, the account of what occurred during the next 3 minutes varies according to the complainant and the officers. The complainant alleged that he was immediately instructed to exit the car, walk back to the officers, was grabbed, patted down, handcuffed, and then had his wallet and license removed. The complainant said his vehicle was searched shortly thereafter. Both officers said they had no independent recall of this incident, but as a general practice would only pat down and handcuff if the driver had possible wants or warrants.

The MDC record shows that at 22:36:36 the officers entered into their MDC the complainant's name, physical description, and birth date. This entry indicates the officers had obtained the complainant's driver's license, but there is no evidence to indicate how the officers obtained it.

At 22:36:40, Communications advised the officers "Code 6 Charles," or possible wanted person.⁷ At 22:36:50, the MDC response showed a felony hit for a person with a matching last name and race, and relatively close but not matching on other information (the wanted person had a different first name, was 80 pounds lighter, 2 inches shorter, and 4 years older than the complainant). At 22:37:00, the officers broadcast "show Code 4, suspect in custody."

Only 20 seconds elapsed from CD's Code 6 notification until the Code 4 broadcast. It would seem unlikely that the complainant could be removed from the car, controlled, handcuffed, and a broadcast made all in 20 seconds. However, whether the complainant was or was not already

⁴ VC § 21451(a) – "A driver facing a circular green signal shall proceed straight through or turn right or left or make a U-turn unless a sign prohibits a U-turn. Any driver, including one turning, shall yield the right-of-way to other traffic and to pedestrians lawfully within the intersection or an adjacent crosswalk."

⁵ Possible wanted vehicle or wanted person related or connected to the vehicle.

⁶ The OIG received and reviewed a digital audio copy of the radio transmissions during the time of the stop.

⁷ "Code 6 Charles" is radio code advising that a person may have a want or warrant.

handcuffed cannot readily be determined based on the contents of the Department's investigation.

According to the printed Incident Recall, the officers cleared the call 6 minutes later at 22:43 hours, which indicates that the complainant was likely released at that point.

The only evidence to indicate when the car search occurred is the complainant's statement that the vehicle search occurred after he was handcuffed. As described above, there is no evidence to determine whether the handcuffing and search occurred before the Code 6 broadcast, or after.

Each officer received a Racial Profiling allegation, which was adjudicated as Unfounded.⁸ One officer received two Unlawful Search allegations, adjudicated as Exonerated, and an Unauthorized Tactics allegation, adjudicated as Exonerated, with the commanding officer's rationale for these last three allegations (Nos. 3 to 5) as follows:

A want/warrant check revealed a possible match to an outstanding warrant in the complainant's name. According to the incident history report, Communications Division initiated a Code Six Charles broadcast. Upon receiving the broadcast, Officer [last name] immediately handcuffed and conducted a pat down search of the complainant. According to the complainant, Officer [last name] also searched an area of his vehicle well within the scope of the law. Officer [last name]'s actions as described by the complainant were legally appropriate and consistent with Department's tactical training policies and procedures. It is therefore recommended that Allegations 3 thru 5 be classified as EXONERATED.

Non-Compliant Tests

Test No. 2h - Determine that there are no significant concerns or questions that potentially impact the adequacy and thoroughness of the investigation that have not already been addressed in previous questions.

The complainant indicated that the vehicle stop occurred in front of a busy liquor store and that people were watching. However, there was no attempt by either the Area supervisor who started the investigation or IAG supervisor who completed the investigation to interview the liquor store owner/employees working at the time of the incident.

⁸ In 2009, the Board of Police Commissioners approved the elimination of the "Racial Profiling" classification in favor of "Biased Policing" to cover Racial Profiling as well as a larger universe of prohibited activities.

Test No. 5 - Determine if the adjudication of the allegations was reasonable based on the investigative evidence and results.

The investigating officer stated in the incident timeline that “*Communications Division [(CD)] initiated a Code 6 Charles broadcast.*” The adjudicating officer concluded in his rationale that this broadcast prompted the accused officer to then immediately handcuff and pat-down search the complainant and search the complainant’s vehicle, in accordance with Department policy.

However, the OIG questions this conclusion by the adjudicating officer. While the 20 seconds between the CD’s Code 6 broadcast and the officers’ “in custody” response might be sufficient time to handcuff, the complainant’s account of the incident is that officers handcuffed him *before* taking his license and running his information. Ultimately, there is an absence of any evidence to confirm either account of events.

Similarly, there is an absence of evidence to establish when the car search took place, relative to the warrant information. The complainant said that his vehicle was searched after he was handcuffed, but as discussed above, there is an absence of evidence to confirm whether both searches occurred before the officers received the warrant information, or after. A vehicle search conducted before the warrant information would likely be unlawful (lacking legal basis); a vehicle search conducted after the warrant information would likely be legally appropriate.

The OIG believes that the two Unlawful Search allegations involving the complainant’s person and vehicle and the Unauthorized Tactics allegation should have been adjudicated as Not Resolved instead of Exonerated because:

- There were no public witness interviews or on-scene video/audio recording of the stop.
- Each officer, interviewed approximately eight months after the subject stop, stated that he could not remember the subject stop. Each officer further stated that their normal practice was to handcuff and pat-down search a suspect *after* they received information that there was possibly an arrest warrant for the suspect. Here however, there does not appear to be a preponderance of evidence that the officers had received the possible warrant information *before* they conducted the handcuff and pat-down.
- Neither the Incident Recall with CD, the digital audio recording of radio traffic, nor the want/warrant check print-out in the investigative file helped prove the timing of the alleged person and vehicle searches (i.e., *before* or *after* the officers received information that there was possibly an arrest warrant for the complainant).

IAG MANAGEMENT'S RESPONSE

Management of IAG generally agreed with the results of the Audit.

CONCLUSION

The OIG concluded overall that IAG complaint investigations with one or more allegations of Unlawful Search or False Imprisonment adjudicated as Exonerated were quality investigations with reasonable adjudications. This conclusion is based on the high compliance rates (97% or above) for all 20 tests involving 29 IAG complaint investigations and 120 audio-recorded interviews reviewed by the OIG. The OIG had 3 reportable issues involving 3 tests for 2 of the 29 complaint investigations.